

# NATIONAL ENERGY MARKETERS ASSOCIATION

## BEFORE THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Procurement of Default Service Power	)	
Supply for Residential and Small	)	D.T.E. 04-115
Commercial and Industrial Customers	)	

### COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits comments pursuant to the Department's, "Request for Comments," issued December 6, 2004, in the above-referenced proceeding. The Commission is interested in comments on how "current default service procurement policies could be modified to ensure that the benefits of the competitive market accrue to all Massachusetts ratepayers." NEM submits that default service can be improved with shorter-term periods, in addition to a portfolio approach utilizing more than two solicitations.

#### **1. Would smaller customers be better served if power supply for default service were procured using a portfolio of more than two solicitations? Please discuss the advantages and disadvantages of increasing the number of solicitations used to procure default service supply.**

Portfolio diversification is normally a wise investment strategy. However, default services that are provided with no risk capital by a utility rather than a fully at risk competitive supplier will not yield the maximum value for the consumer, regardless of how many solicitations are requested. The accurate answer to the question, if default services are not competitively provided directly to the customer, will depend on the costs of each solicitation and externalities built into the solicitation specifications. NEM members agree that regulatory price signals should be as close to current market prices as possible. NEM members urge DTE to use the legal deference to its existing statutory authority and expertise to implement competitive bidding for direct access to consumers.

---

<sup>1</sup> NEM is a national, non-profit trade association representing wholesale and retail marketers of natural gas, electricity, as well as energy and financial related products, services, information and advanced technologies throughout the United States, Canada, and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, electronic trading exchanges and price reporting services, advanced metering, demand side management and load management firms, billing, back office, customer service and related information technology providers. NEM members are global leaders in the development of enterprise solution software for energy, advanced metering, telecom, information services, finance, risk management and the trading of commodities and financial instruments. NEM members also include inventors, patent holders, systems integrators, and developers of advanced Broadband over Power Line (BPL), Power Line Communications (PLC) technologies, and Hybrid-PLC as well. NEM and its members are committed to helping federal and state lawmakers and regulators to implement a consumer-focused, value-driven transition to a reliable, price and technology competitive retail marketplace for energy, telecom, and financial related products, services, information and technologies.

While increasing the number of solicitations for utility provided default service could be considered as a step in the right direction, after seven years, direct competitive access to the consumer would be a far better outcome. The public interest is better served if competitive utility provided products, services, information and technology are outsource and funded with private “at-risk” capital, not with ratepayer guarantees. The more regulatory requirements are imposed on either supply or demand, the more costs increase for the consumer. Without offsetting subsidies that create further inefficiencies, increased costs for energy generally has a disproportionately negative impact on consumers least able to afford it.

**2. Would smaller customers be better served if power supply for default service were procured for a term longer than twelve months? Please discuss the advantages and disadvantages of using supply terms greater than twelve months. In particular, please discuss:**

- a. Whether longer contract terms are likely to produce lower prices,**
- b. How such an approach would affect price certainty and market efficiency, and**
- c. How such an approach could be tailored to accommodate customer migration to competitive supply.**

Energy policy seems to be on a cycle of market to regulation and back depending on prevailing prices. Historically, market based prices have yielded lower energy costs than regulation. The NGPA produced ten dollar natural gas prices by regulatory fiat while deregulation of the interstate natural gas markets via FERC Orders 436-636 yielded prices as low as fifty cents nearly a decade later.

Competitive suppliers specialize in risk management. There is likely no more cost effective way to implement longer term fixed prices than to require no risk utility capital to exit competitive functions and refocus its capital on infrastructure. If no risk utility provided services must remain in the marketplace, then it should provide a near real time pass through of current market prices and permit private at risk capital to provide competitively priced longer term products to suit the existing demand.

Regulations can not mandate market liquidity. When New Jersey implemented its three-year wholesale Basic Generation Service (BGS) requirements and increased counterparty credit requirements, it forced higher risk premiums onto energy prices because longer term supplies were not generally available and credit costs increased as well. Generally “no risk” “fixed prices” offered by utilities and guaranteed by ratepayers encourages or discourages consumption decisions out of sync with competitive market conditions. Over the long term, a mismatch of price to market-based risk exacerbates the boom-bust cycle also created by regulation when forward prices either exceed or undercut fixed utility prices. Private “at risk” capital is always at a competitive disadvantage with no risk utility capital. This regulatory paradigm inherently destabilizes an opportunity for competitive markets to develop.

By comparison, the large commercial and industrial customers that are exposed to market-based, hourly pricing on BGS have migrated in sizable numbers to competitive suppliers.

**3. Would smaller customers be better served if power supply for default service was procured on a statewide basis? Please discuss the advantages and disadvantages of using a statewide approach to default service procurement.**

See Response to Question 4.

**4. Would smaller customers be better served if power supply for default service was procured using an auction process (e.g., descending clock) rather than through requests for proposals? Please discuss the advantages and disadvantages of using an auction process to procure default service. In particular, please discuss whether using an auction is likely to produce lower default service prices.**

A statewide method of procurement (be it an RFP process as utilized in Maryland or auction process as utilized in New Jersey) versus utility-specific methods of procurement could stimulate increased participation by competitive suppliers. This is because a statewide, uniform procurement process that utilizes common methods for the timing of the procurement process, duration of contracts, terms and conditions of service, application of a retail adder, application of a risk premium, creditworthiness requirements etc., across all Massachusetts utilities could permit competitive suppliers to participate in a more cost- and time-effective manner. Furthermore, a statewide process versus a utility-specific process may better ensure the competitive neutrality of the outcome.

A properly structured competitive auction process is one of a number of means to lower the costs and risks associated with a utility performing commodity procurement functions. In addition, the resultant pricing likely would accelerate the migration of current consumption decisions to match current market-based prices in an equitable, efficient and cost-effective manner.

A properly structured auction process, based on a monthly formula tied to a widely known and credible index, such as the published indices, will send more accurate market-based price signals to consumers. This, in turn, permits consumers to make more accurate consumption decisions based on current market-conditions. Accurate demand response alone increases efficiency and mitigates costs through conservation. An auction of “pre-aggregated” customers as proposed in last year’s legislation permits suppliers to lower aggregation costs and compete for new customers by passing along some or all of these savings.

**5. Although the term “default service” is statutory, G.L. c. 164, § 1, it has confused some customers because of its unintended suggestion of nonfeasance in performing a legal or contractual obligation. Is there some better or more descriptive term that ought to be used by the distribution companies on and after March 2005?**

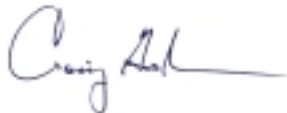
The term “default service” is currently defined by G.L. c. 164 § 1 as,

the electricity services provided to a retail customer upon either the (i) failure of a distribution company or supplier to provide such electricity services as required by law or as contracted for under the standard service offer, (ii) the completion of the term of the standard service offer, or (iii) upon the inability of a customer to receive standard service transition rates during the term of the standard service offer pursuant to section 1B.

As set forth above, there is the implication that a customer would receive default service if its utility or competitive supplier “failed” to provide service. In the post transition period following the expiration of the standard service offer, it may be useful to reexamine this definition or term. In the long term in a competitive market, “default service” should be a truly “last resort service” that customers use on a short-term basis when they are not being served by a competitive supplier and it should be priced to reflect the fully allocated embedded costs of providing 24/7 no notice service. Whatever term is used should reflect the interim, temporary nature of the service as well as its premium pricing.

In conclusion, NEM submits that the DTE should use its statutory authority and the deference to which its expertise is entitled to encourage utilities to outsource competitive functions to competitive suppliers using private at risk capital. NEM urges the DTE to implement accelerated customer migration policies similar to NY’s Policy Statement. When combined with shorter-term supply periods and a portfolio approach to solicitation, competition, and Massachusetts’ consumers, will benefit.

Respectfully submitted,



Craig G. Goodman, Esq.  
President,  
National Energy Marketers Association  
3333 K Street, NW, Suite 110  
Washington, DC 20007  
Tel: (202) 333-3288  
Fax: (202) 333-3266  
Email: [cgoodman@energymarketers.com](mailto:cgoodman@energymarketers.com)  
Website-[www.energymarketers.com](http://www.energymarketers.com)

Dated: January 9, 2005.